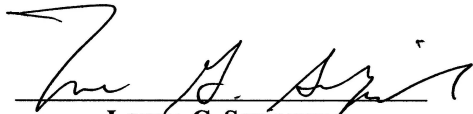


**ArentFox
Schiff**

March 28, 2023

VIA ECF



LORNA G. SCHOFIELD

UNITED STATES DISTRICT JUDGE

Evidence of Defendant's motive is relevant to Plaintiff's breach of contract claim insofar as it indicates that Defendant unreasonably exercised its discretion under ¶ 17.3. That provision requires Plaintiff to take "all reasonable measures" to ensure the fire suppression system "does not create any sound or noise that will impair Purchaser's quiet enjoyment and use of the unit." Evidence that Defendant's complaints about noise were made in bad faith is probative as to whether Plaintiff was in compliance with the parties' agreement at the time of Defendant's alleged breach. *See Travelex Currency Servs., Inc. v. Puente Enters., Inc.*, No. 18 Civ. 1736, 2020 WL 4747500, at *4 (S.D.N.Y. Aug. 17, 2020). Accordingly, Plaintiff may elicit deposition testimony relating to Topics Nos. 7, 11, 12 and 15. So Ordered.

Dated: March 29, 2023
New York, New York

Re: Case No. 1:22-cv-08634 (LGS), 41-45 Property Owner, LLC v. CDM1, LLC

Dear Judge Schofield:

We represent Defendant and Counter-Plaintiff CDM1, LLC ("CDM1") in the above-matter. We write concerning the issues addressed in the March 22, 2023 letter motion of Plaintiff and Counter-Defendant 41-45 Property Owner, LLC ("Sponsor") (ECF No. 48) and CDM1's March 23, 2023 response to that motion (ECF Nos. 48 and 50).

Counsel for the parties conferred after the order entered today by the Court (ECF No. 51), but they were unable to agree on the effect of the Court's ruling. Sponsor's position is that today's ruling bars only Topic 6 of Sponsor's 30(b)(6) deposition notice. CDM1's position is that the Court's ruling bars Topics 6, 7, 11, 12, and 15(ii) and (iii).

Sponsor's arguments in its March 22 letter for Topics, 6, 7, 11, and 12 were based only on Sponsor's second cause of action, which the Court dismissed today. Regarding Topic 15, as CDM1 explained in its March 23 letter, it is undisputed that CDM1 did not terminate the Agreement, and CDM1's motivation or intent on insisting that Sponsor comply with the Agreement is irrelevant, consistent with the Court's March 10, 2023 Order. (*See* ECF No. 44.)

CDM1 is scheduled to present its 30(b)(6) witness for his deposition this Thursday, March 30, 2023. CDM1 requests that the Court rule specifically on the issues raised in Plaintiff's March 22, 2023 motion and Defendant's March 23, 2023 response for the reasons the parties presented in those letters so that it will not be necessary to interrupt Thursday's deposition to call the Court.

Sincerely,

/s/ Frederick J. Sperling

Frederick J. Sperling